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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/751,858
Filing Date: December 29, 2000
Appellant(s): SANTOS ET AL.

MAILED

AUG 2 9 2006

GROUP 3600

Thomas B. Luebbering (Reg. No. 37,874)
<u>For Appellant</u>

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 20, 2006 appealing from the Office

action mailed November 22, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,065,000   JENSEN   5-2000

Pfeiffer, Donald W. "Safety Plan Nets Results at Teksid." Foundry Management & Technology, vol. 126, no. 7 (July 1998), page 28.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Jensen (U.S. Patent No. 6,065,000) in view of Pfeiffer ("Safety Plan Nets Results

at Teksid").

Jensen discloses a system for facilitating statistical analysis of events, the

system comprising:

[Claim 1]   a first input device operable to receive raw data regarding the events,

including the nature, place, time, and date of each event, and convert the raw data into

formatted data having a suitable electronic format (col. 3, lines 12-15; cols. 9-10, Table

5 (see at least # 20, 22, 29-33, 38); cols. 11-12, Table 6; col. 13, lines 1-12);

a memory storage device operable to store the formatted data (col. 12, line 65

through col. 13, line 14);

a code segment operable to perform date gap analysis and control chart analysis

on the formatted data to produce an analysis output (Figs. 5-8, 10, 15, 22, 69, 70 --

Accidents may be graphed or charted based on frequency by day of week, time of day,

and over a given period of time, such as a month, year, or specified date range; Figs.

31, 42, 43 -- An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output);

a display device operable to display the analysis output (Figs. 31, 42, 43 -- An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output); and

a second input device operable to allow a user to request a more specific analysis of at least one identified event, with the identified event being user-selected from the display (Fig. 43; col. 3, lines 12-15; col. 13, lines 1-12 -- A user may access additional information regarding a particular incident. For example, Fig. 43 shows a "Performance Analysis" section that summarizes accidents associated with a given individual. "Advanced Investigation," i.e., further analysis, may also be requested);

[Claim 3]   the events involving employee illness and injury (cols. 9-10, Table 5; cols. 11-12, Table 6; col. 13, lines 1-12);

[Claim 4]   the analysis output being displayed in a chart format (Figs. 31, 42, 43 -- An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output. The specific corrective action entered is displayed in the row labeled "Corrective Action"; therefore, this display of data is a type of mini chart);

[Claim 6]   the second input device being selected from the group consisting of: computer mice, trackballs, light pens, touch sensitive screens, keyboards (col. 3, lines 12-15; col. 13, lines 1-12).

As per claim 1, Jensen provides various examples of date gap analysis and control chart analysis. Jensen also allows information regarding corrective actions responsive to workplace incidents to be recorded and displayed; however, Jensen does not expressly teach that a code segment makes workload adjustments based on these analyses. Official Notice is taken that it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions. For example, an increase in the frequency of accidents and/or dangerous work-related decisions being made by overworked doctors, nurses, truck drivers, etc. have led safety proponents in each respective industry to push for a lower limit on the number of consecutive hours an employee may work. This is an example of a workload adjustment being made in response to analysis of workplace-related injury and accident statistics. Similarly, Jensen is directed toward analysis of workplace-related injury and accident statistics in order to better monitor these incidents for accurate reporting to safety governing bodies, such as OSHA (abstract); therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen to generate corrective actions involving workload adjustments in order to extend the usefulness of Jensen's invention to industries where many workers are negatively affected by poor workload conditions, thereby making Jensen's invention more versatile, comprehensive, and effective in its ability to promote safer working environments. Furthermore, the Examiner asserts that the computer automation of a well-known manual process is old and well-known in the art. Computer automation of a well-known manual process facilitates more rapid, efficient, and

accurate performance of the process in comparison to the same process performed entirely by hand. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen's computer system code segment to make the workload adjustments based on date gap analysis and control chart analysis in order to facilitate more rapid, efficient, and accurate performance of the workload adjustments as opposed to if they were performed entirely by hand.

Furthermore, as per claim 1, Jensen does not expressly disclose that its computer-executed date gap analysis includes determining an elapsed time between consecutive events and an average elapsed time, wherein the output includes a value for each elapsed time and a value for each average elapsed time. However, looking at Jensen's graphs, it is clear that accidents may be graphed or charted based on frequency by day of week, time of day, and over a given period of time, such as a month, year, or specified date range (Figs. 5-8, 10, 15, 22, 69, 70). For example, Fig. 8 lists specific events and corresponding dates of occurrence. Figs. 69 and 70 allow a user to view accident reports based on the frequency by day of the week or frequency by time of the day. Fig. 8 even isolates specific events and identifies the date of occurrence, thereby lending itself to an understanding of the lapse of time between the specific events. Pfeiffer discusses Teksid Aluminum Foundry Inc.'s Safety and Health Program that has been implemented to reduce incident rates (¶ 1). This program serves as a model to improving work safety, especially in light of the goals of OSHA (¶ 12). As part of this program, Teksid Aluminum Foundry Inc. "displays recordable

incidents per month and days since the last lost time incident throughout the plant" (¶

12). Both Jensen and Pfeiffer are directed toward improving workplace safety,

especially in light of OSHA requirements. Furthermore, as discussed above, Jensen

automates the collection of data needed to calculate lapse of time between specific

events; therefore, the Examiner asserts that it would have been obvious to one of

ordinary skill in the art to modify Jensen to determine an elapsed time between

consecutive events, wherein the output includes a value for each elapsed time in order

to facilitate implementation of a safety program that alerts workers to the days that have

passed since the last incident in order to provide these workers with a concrete goal to

surpass in an effort to improve workplace safety, as suggested by Pfeiffer. Additionally,

Official Notice is taken that it is old and well-known in the art to utilize a computer to

automatically perform a well-known calculation in order to more rapidly complete the

calculation while reducing errors commonly introduced by human intervention.

Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill

in the art at the time of Applicant's invention to utilize a computer, programmed with the

proper code segments, to perform this step of determining an elapsed time between

consecutive events, wherein the output includes a value for each elapsed time in order

to more rapidly complete the calculation while reducing errors commonly introduced by

human intervention.

Further addressing claim 1, Pfeiffer also touts that "TAF worked nearly 2,000,000

hours without a lost time incident and has reduced recordable incidents from 379 in

1994 to 73 in 1997. This incident rate is approximately one half of the foundry industry

average in the United States" (¶ 15). Clearly, meeting certain industry expectations

(e.g., in relation to an average incident rate) establishes an important benchmark by

which companies measure themselves. Therefore, in line with the reasoning presented

above, the Examiner further submits that it would have been obvious to one of ordinary

skill in the art at the time of Applicant's invention to modify Jensen to determine an

average elapsed time (presumably between consecutive events, although this is not

expressly claimed), wherein the output includes a value for the average elapsed time in

order to facilitate implementation of a safety program that alerts workers to the days that

have passed since the last incident in order to provide these workers with a concrete

industry-based goal to surpass in an effort to improve workplace safety, as suggested

by Pfeiffer. Also, the Examiner asserts that it would have been obvious to one of

ordinary skill in the art at the time of Applicant's invention to utilize a computer,

programmed with the proper code segments, to perform this step of determining an

average elapsed time, wherein the output includes a value for the average elapsed time

in order to more rapidly complete the calculation while reducing errors commonly

introduced by human intervention.

Regarding claim 2, Jensen's system receives accident reports as users enter

them, which may or may not be daily. Accident reports are only entered when accidents

occurs; therefore, if accidents did not occur daily, then reports would likely not be

entered daily. On the other, the Examiner asserts that it would have been obvious to

one of ordinary skill in the art at the time of Applicant's invention for Jensen's input

device to receive data on a daily basis in order to maintain an accurate and updated

account of incidents, especially at a location(s) where reportable incidents occur on a daily basis.

As per claim 5, Jensen displays analysis output in a graphical format, such as a chart format; however, Jensen does not expressly teach that the analysis output may be displayed in a tabular format. Official Notice is taken that it is old and well-known in the art to display data in a tabular form in order to meet the needs of users who prefer their reported data organized and selectable by tabs. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to provide Jensen's users with the option of having the analysis output displayed in a tabular format in order to meet the needs of users who prefer their reported data organized and selectable by tabs.

[Claims 7-11]   Claims 7-11 recite limitations already addressed by the rejection of claims 1-6 above; therefore, the same rejection applies.

Furthermore, as per claim 9, the fact that Jensen can filter and sort data by date, incident types, etc. is indicative of the fact that Jensen's invention inherently comprises code segment for separating data into a plurality of data sets based upon a predetermined separation criteria.

[Claims 12-16, 27]   Claims 12-16 and 27 recite limitations already addressed by the rejection of claims 1-11 above; therefore, the same rejection applies.

Additionally, in reference to claim 27, the rejection of claim 1 states, "Official Notice is taken that it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions. For example, an increase in the frequency of accidents and/or dangerous work-related decisions being made by overworked doctors, nurses, truck drivers, etc. have led safety proponents in each respective industry to push for a lower limit on the number of consecutive hours an employee may work. This is an example of a workload adjustment being made in response to analysis of workplace-related injury and accident statistics." The Examiner submits that "correlating a number of events with a number of working employees to determine if the number of events is proportional with the number of working employees" (claim 27) is an old and well-known approach to making workload adjustments. Continuing with the aforementioned examples, if doctors, nurses, truck drivers, etc. are determined to be overworked based on the frequency of accidents, or events, then it is common practice to limit the hours consecutively worked by these types of workers. However, this limit requires that a larger number of employees be assigned to work overall in order to cover the needed shifts, hours, distances, etc. Therefore, using the same line of reasoning that is presented above in the rejection of claim 1, the Examiner asserts that it also would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen to correlate a number of events with a number of working employees to determine if the number of events is proportional with the number of working employees (claim 27) in order to extend the usefulness of Jensen's invention to industries where many workers

are negatively affected by poor workload conditions, thereby making Jensen's invention

more versatile, comprehensive, and effective in its ability to promote safer working

environments.

[Claims 17-21]   Claims 17-21 recite limitations already addressed by the rejection

of claims 1-11 above; therefore, the same rejection applies.

Furthermore, as per claim 21, Jensen discloses that different data sets may be

analyzed and displayed in resulting charts. For example, Fig. 43 displays a mini chart

corresponding to "Accident History," another mini chart corresponding to "Performance

Analysis," another one showing "Corrective Action Assigned to," etc. All of these mini

charts are displayed simultaneously and are representative of different data sets.

(10) Response to Argument

Appellant argues that "neither of the prior art references relied upon by the

Examiner mention anything remotely related to making workload adjustments to data,

much less making workload adjustments, performing date gap analysis, and performing

control chart analysis on the same data." (Page 9 of the Appeal Brief) The Examiner

respectfully disagrees. As admitted in the art rejection, Jensen does not expressly

teach that a code segment makes workload adjustments based on these analyses.

However, Official Notice was taken that it is old and well-known in the art of workplace

management to adjust workloads accordingly in response to dangerous working

conditions. For example, an increase in the frequency of accidents and/or dangerous

work-related decisions being made by overworked doctors, nurses, truck drivers, etc. have led safety proponents in each respective industry to push for a lower limit on the number of consecutive hours an employee may work. This is an example of a workload adjustment being made in response to analysis of workplace-related injury and accident statistics. First, Appellant has not challenged any of the statements of Official Notice made in the art rejection. Examiner notes that, as per MPEP § 2144.03(C), the statements of Official Notice made in the art rejection have been established as admitted prior art since Appellant has not traversed the Examiner's assertions of Official Notice. Second, the Examiner provided a real-world example to support this particular statement of Official Notice in the art rejection. Appellant does not explain how the rejection *as a whole* (including this particular statement of Official Notice) fails to address the limitation in question.

The Examiner additionally asserted "that the computer automation of a well-known manual process is old and well-known in the art. Computer automation of a well-known manual process facilitates more rapid, efficient, and accurate performance of the process in comparison to the same process performed entirely by hand." In response to this analysis, Appellant submits the following:

> The Examiner's reasoning and conclusions are flawed. In arguing, for example, that it would have been obvious to one of ordinary skill in the art to modify Jensen to "generate corrective actions involving workload adjustments in order to extend the usefulness of Jensen's invention," the Examiner is attempting to redesign the system disclosed in Jensen from a data standardization and reporting system to a system for generating solutions to the problem of workplace injuries. This proposed redesign assumes that merely adjusting the workload of employees would suffice as

> a solution to the problem of workplace injuries. This
> assumption finds no support in either Jensen or Pfeiffer.
> (Page 11 of the Appeal Brief)

The Examiner respectfully disagrees. Both Jensen and Pfeiffer are directed toward improving workplace safety, especially in light of OSHA requirements. In Jensen's description of the technical field of the invention, Jensen states that "the invention includes a method of prompting a user for information about the workplace such as employee identification, accident and injury classification, and educational and precautionary actions to be taken...The recording and reporting of statistics about such incidents is both necessary to comply with governmental regulations, and useful to evaluate and improve workplace safety." (Col. 1, lines 16-19, 23-26) Clearly, Pfeiffer's reporting of days since last lost time incident in conformance with OSHA guidelines (¶ 12) in combination with the officially noticed fact that it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions present a solution reasonably pertinent to the problem at hand in Jensen, i.e., improvement of workplace safety. Using Jensen's data in combination with other workplace statistics (such as those disclosed by Pfeiffer) does not alter the core operations of Jensen. Instead, such a combination would further enhance Jensen's existing analytical capabilities.

Regarding claim 1, Appellant further argues the following:

> ...Thus, the invention of claim 1 enables a computer to make
> workload adjustments to data. The Examiner, in contrast,
> argues that it would be obvious to adjust actual workloads,
> such as the workload of "doctors, nurses, truck drivers, etc."
> It will be appreciated that making workload adjustments to

>data as part of statistical analysis of the data is an entirely
>different matter than adjusting an actual <u>workload</u> of a
>worker. As explained in the application, for example, making
>workload adjustments to data involves computing a daily
>cumulative total of full-time employees (FTE) for each day,
>such that the difference between the cumulative number at
>the time of the event and the cumulative number at the time
>of the previous event represents the number of full-time
>employee days between events. FTE days can then be
>used to represent time between events instead of calendar
>or work days. (Page 11 of the Appeal Brief)

Claim 1 recites the formatting of data regarding the events, including nature,

place, time, and date of each event. The claim does not expressly recite that workload

adjustments are directly made to the formatted data. Furthermore, such an

interpretation would not make sense since the event data does not comprise workload

data *per se*. Instead, the Examiner has made the interpretation that making "workload

adjustments thereto" refers to the fact that workload adjustments are made based on or

in light of the formatted data. Additionally, in response to Appellant's argument that the

references fail to show certain features of Appellant's invention, it is noted that the

features upon which Appellant relies (i.e., "making workload adjustments to data

involves computing a daily cumulative total of full-time employees (FTE) for each day,

such that the difference between the cumulative number at the time of the event and the

cumulative number at the time of the previous event represents the number of full-time

employee days between events. FTE days can then be used to represent time between

events instead of calendar or work days.") are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993). Finally, a workload adjustment is necessarily going to

alter (or adjust) an existing workload, which is an example of data.

Appellant argues, "The Examiner has also failed to cite a reference or

combination of references that teach or suggest 'a computer-readable medium encoded

with a code segment operable to enable a computer to perform date gap analysis and

control chart analysis' on formatted data, wherein 'the date gap analysis includes

determining an elapsed time between consecutive events and an average elapsed

time,' as recited in claim 1." (Page 11 of the Appeal Brief) Appellant continues to argue

why Jensen does not teach this limitation. Then, Appellant separately argues why

Pfeiffer does not teach this limitation either (page 12 of the Appeal Brief). In response

to Appellant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA

1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Additionally,

the art rejection utilizes various statements of Official Notice in combination with Jensen

and Pfeiffer along with a detailed line of reasoning linking all of these teachings in order

to address the limitation in question. Appellant fails to address this rejection as a whole

(especially the Official Notice statements as well as the detailed line of reasoning

presented in the art rejection); therefore, Appellant's arguments are non-persuasive.

Appellant argues that "the Examiner has also failed to cite a reference or

combination of references that teach or suggest 'a second input device operable to

allow a user to request a more specific analysis of at least one identified event, with the

identified event being user-selected from the display.'" (Page 12 of the Appeal Brief)

First, it should be noticed that the phrase "operable to" is indicative of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The claimed recitations of intended use (i.e., all of the functionality following the "operable to" language in the claims) neither result in a structural difference between the claimed invention and the prior art nor in a manipulative difference as compared to the prior art; therefore, the claimed invention is not deemed to be patentably distinct over the prior art.

Second, claim 1 recites that the second input device is *"operable to allow* a user to request a more specific analysis of at least one identified event..." The fact that a user is "allowed to" perform specified functionality does not mean that the functionality is actively carried out; therefore, such a recitation fails to positively require that the specified functionality be performed as part of the claim scope. Consequently, any structure capable of performing the recited functionality addresses such a limitation. Jensen discloses various input devices, including keyboards and display cursor control systems, that allow a user to review and modify information (col. 3, lines 12-15). The user can input new records and select existing records to be modified and displayed .

through interaction with input devices, such as a keyboard and display cursor control

systems (col. 12, lines 49-64). Jensen's disclosed keyboards and display cursor control

systems are examples of a first input device and a second input device, as recited in

claim 1. As a matter of fact, dependent claim 6 further limits the second input device to

one of several options, including a keyboard (which is clearly taught by Jensen).

Also, it should be noted that the recited "more specific analysis of at least one

identified event" is non-functional descriptive material that is not functionally involved in

the steps recited nor does it alter the recited structural elements; therefore, such data

does not effectively serve to patentably distinguish the claimed invention over the prior

art. The recited method steps would be performed the same regardless of the specific

data. Further, the structural elements remain the same regardless of the specific data.

Thus, this descriptive material will not distinguish the claimed invention from the prior art

in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404

(Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §

2106.

Appellant argues that "there is no motivation or suggestion to modify Jensen as

proposed by the Examiner because Jensen is fundamentally different than the

application invention." (Page 13 of the Appeal Brief) The Examiner respectfully

disagrees. By Appellant's own admission, "the process disclosed in Jensen, for

example, is intended to standardize the reporting of workplace incidents by using

various pre-determined lists of variables to assist users in creating workplace reports"

and the invention recited in claim 1 "in contrast, advances the art by using special

analysis techniques to recognize trends and patterns in data collected over a period of

time." (Page 13 of the Appeal Brief) The Examiner maintains that Jensen in view of

Pfeiffer and other knowledge generally available to one of ordinary skill in the art at the

time of Appellant's invention provides motivation for modifying Jensen to address the

claimed invention. Appellant fails to address the rejection as a whole; therefore,

Appellant's arguments are not persuasive.

Regarding claim 7, Appellant argues that "the prior art clearly does not teach or

suggest performing a more specific analysis on an 'identified portion [of data]...selected

from the chart'" (Page 15 of the Appeal Brief). As explained in the art rejection of claim

1 (upon which the rejection of claim 7 was based), Jensen discloses that the identified

event is user-selected from the display (Fig. 43; col. 3, lines 12-15; col. 13, lines 1-12 --

A user may access additional information regarding a particular incident. For example,

Fig. 43 shows a "Performance Analysis" section that summarizes accidents associated

with a given individual. "Advanced Investigation," i.e., further analysis, may also be

requested). Figure 43 shows a chart on its display. A user may select one of the

displayed fields from this chart to view further analysis regarding information in the

displayed chart, thereby addressing the limitation of claim 7 in question.

Regarding claim 11, Appellant argues that "the prior art clearly does not teach or

suggest 'the more specific analysis involving date gap analysis, control chart analysis,

and workload adjustment on the identified portion of the data'" (Page 16 of the Appeal

Brief). The fact that the more specific analysis "involves" date gap analysis, control

chart analysis, and workload adjustment means that the more specific analysis is

somehow linked to date gap analysis, control chart analysis, and workload adjustment. As discussed in the art rejection, the Jensen-Pfeiffer-Official Notice combination addresses these types of analysis, so the ability of a user to select a displayed item from a screen to view further analysis (as taught by Jensen) in combination with the performance of date gap analysis, control chart analysis, and workload adjustment (as addressed by the Jensen-Pfeiffer-Official Notice combination) implies that the more specific analysis is related to date gap analysis, control chart analysis, and workload adjustment.

Appellant submits that the arguments for claim 11 also apply to claim 20 (page 16 of the Appeal Brief); therefore, the Examiner's response to the arguments for claim 11 applies to claim 20 as well. Further regarding claim 20, Appellant submits that the prior art does not address the step of "'displaying the resulting chart' relating to the additional date gap analysis, control chart analysis, and work load adjustment." (Page 17 of the Appeal Brief) However, a "chart" is merely "a sheet presenting information in the form of graphs or tables" (as per the definition of "chart" from http://www.dictionary.com). Jensen's analysis and "more specific analysis" are presented in chart form, as seen in most of Jensen's figures; therefore, a modification of merely the type of data presented in Jensen's displays would still incorporate the chart format disclosed by Jensen, without further explanation of modification to Jensen.

Regarding claim 21, Appellant argues, "Because the prior art does not teach or suggest performing date gap analysis, control chart analysis, or workload adjustment on a single set of data, as explained above, it clearly does not teach the concept of

performing such analyses on different data sets and simultaneously displaying charts

resulting from the analyses performed on different data sets" (page 17 of the Appeal

Brief). As discussed above and in the art rejection, Jensen performs date gap analysis

and control chart analysis (Figs. 5-8, 10, 15, 22, 69, 70 -- Accidents may be graphed or

charted based on frequency by day of week, time of day, and over a given period of

time, such as a month, year, or specified date range; Figs. 31, 42, 43 -- An assessment

of appropriate corrective actions to be taken can be recorded and displayed as an

analysis output). The Jensen-Pfeiffer-Official Notice combination addresses the details

of the analysis involving elapsed time between consecutive events and an average

elapsed time. Also, Jensen discloses that different data sets may be analyzed and

displayed in resulting charts. For example, Fig. 43 displays a mini chart corresponding

to "Accident History," another mini chart corresponding to "Performance Analysis,"

another one showing "Corrective Action Assigned to," etc. All of these mini charts are

displayed simultaneously and are representative of different data sets; therefore, the

Jensen-Pfeiffer-Official Notice combination as a whole addresses the limitation in

question. Additionally, it should be noted that the type of data presented simultaneously

in various charts is non-functional descriptive material that is not functionally involved in

the steps recited nor does it alter the recited structural elements; therefore, such data

does not effectively serve to patentably distinguish the claimed invention over the prior

art. The recited method steps would be performed the same regardless of the specific

data. Further, the structural elements remain the same regardless of the specific data.

Thus, this descriptive material will not distinguish the claimed invention from the prior art

in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §*
2106.

Regarding claim 27, Appellant submits that "the prior art references do not teach or suggest the specific step of 'correlating a number of events with a number of working employees to determine if the number of events is proportional with the number of working employees.'" (Page 18 of the Appeal Brief) The Examiner respectfully disagrees. As explained in the art rejection of claim 27:

> Additionally, in reference to claim 27, the rejection of claim 1 states, "Official Notice is taken that it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions. For example, an increase in the frequency of accidents and/or dangerous work-related decisions being made by overworked doctors, nurses, truck drivers, etc. have led safety proponents in each respective industry to push for a lower limit on the number of consecutive hours an employee may work. This is an example of a workload adjustment being made in response to analysis of workplace-related injury and accident statistics." The Examiner submits that "correlating a number of events with a number of working employees to determine if the number of events is proportional with the number of working employees" (claim 27) is an old and well-known approach to making workload adjustments. Continuing with the aforementioned examples, if doctors, nurses, truck drivers, etc. are determined to be overworked based on the frequency of accidents, or events, then it is common practice to limit the hours consecutively worked by these types of workers. However, this limit requires that a larger number of employees be assigned to work overall in order to cover the needed shifts, hours, distances, etc. Therefore, using the same line of reasoning that is presented above in the rejection of claim 1, the Examiner asserts that it also would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen to correlate a

number of events with a number of working employees to determine if the number of events is proportional with the number of working employees (claim 27) in order to extend the usefulness of Jensen's invention to industries where many workers are negatively affected by poor workload conditions, thereby making Jensen's invention more versatile, comprehensive, and effective in its ability to promote safer working environments.

Appellant has not addressed the Examiner's line of reasoning presented in the art rejection, therefore, Appellant's argument is non-persuasive.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Susanna M. Diaz
Primary Examiner
Art Unit 3623

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